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ZONING HEARING EXAMINER

OF HARFORD COUNTY

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Aegis: 3/21/01 & 3/28/01

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Mr. Jim Martin appeared on behalf of Ward Development Group, indicating that the co-applicant, Isgood LLC, is developing a 20 acre parcel zoned B2 on Churchville Road which adjoins the Harford Community College to the west. Mr. Martin indicated that the subject property is located on the north side of MD Route 22 (Churchville Road), east of Thomas Run Road, and is the site of the Harford Community College. The property adjacent to the subject parcel is B2/Community Business, and will be developed as a commercial store with fuel pumps. This site is directly across from the Grace Assembly of God Church on MD Route 22. There is a driveway proposed for the B2/Community Business District and the Applicant and Co-applicant intend to jointly use a single driveway, which will ultimately be more convenient, provide for traffic safety, and be financially expedient for both the Applicant and the Co-applicant.

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Appearing next was Mr. Donald Porter, Vice-President of Institutional Advancement at Harford Community College. Mr. Porter indicated that Harford Community College will save money as a result of approval of the request to use a single driveway. Mr. Porter further stated that the Harford Community College has a Master Plan for development of the college campus which does include an additional access to Route 22. In the opinion of Mr. Porter, he believes it would be beneficial to Harford Community College and in the interest of traffic safety in the area if a single drive were used for both Isgood LLC and Harford Community College.

Mr. Wes Guckert testified as a traffic expert and indicated that he had conducted a thorough traffic analysis of the proposal, which included standard traffic counts, comparisons and capacity analyses. Mr. Guckert's conclusion was that levels of service will be maintained after the construction of this single driveway entrance used by the two Applicants and believes that the proposed plan is a safer access configuration and will have no adverse impacts at all on any adjacent, adjoining or neighboring properties or to motorists entering or leaving the property.

Next to testify was Mr. Kevin Small, who appeared and qualified as an expert land planner employed by Frederick Ward & Associates. The witness indicated that he agreed with the findings and conclusions of the Department of Planning and Zoning as set forth in their Staff Report prepared in this case and, further, that the use proposed was compatible with other uses in the immediate vicinity of this particular driveway. The witness said that utilization of the this driveway for both the college campus and the proposed commercial convenience store was consistent with good planning and zoning practices and would have no adverse impacts since there will be a driveway there one way or another. The only real difference is that there will be two users as opposed to a single user and that there would be no additional impact associated with this driveway use at this location, as compared with any other location within the zone. The witness testified, in conclusion, that it was his expert opinion that the special exception requested herein should, in fact, be granted.

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The Department of Planning and Zoning, in its Staff Report dated April 13, 2001, thoroughly examined the proposal, the surrounding area, the uses in that area and made specific findings in regard to Section 267-9I of the Harford County Code, entitled “Limitations, Guides and Standards”. The Hearing Examiner and the witnesses that testified indicated complete agreement with the findings of fact as set forth in the Department of Planning and Zoning’s Staff Report and they are adopted by the Hearing Examiner herein as findings of fact.

The following is a review of Section 267-9I, and comments of the Department of Planning and Zoning regarding each subsection:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

The immediate land uses include the College, Campus Hills Shopping center, churches, school, single-family residential developments and farmland. The proposed second entrance will continue to serve the College property and will improve internal circulation on the commercial property.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

The subject properties front on a State owned principal road (MD Route 22) that is a major connector between Aberdeen and Bel Air. There is good sight distance in all directions of the subject access point. The developers of the commercial property will be required to make any necessary road improvements along the frontage of the property and construct the entrance to commercial standards.

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

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The road access will continue to serve the College property as well as the adjoining commercial property. The proposal is consistent with the existing commercial development in the Campus Hills Shopping Center.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**

The proposed driveway should have no impact based on the issues listed in this section.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**

Police protection will be provided by the County's local Sheriff's Department and the Maryland State Police. Since the property is approximately halfway between Bel Air and Aberdeen, fire protection may be from either the Bel Air or the Aberdeen Volunteer Fire Departments. Water, sewer and trash collection are not an issue in this case.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**

The proposed shared driveway will reduce the number of future access points along MD Route 22 which is consistent with good planning and engineering principles.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**

The proposed driveway will not have an adverse impact on adjacent uses in the area.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**

The proposed use as requested is consistent with the County's Master Plan.

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**

There are no environmental features that would be impacted by the request.

- (10) The preservation of cultural and historic landmarks.**

Not applicable to the request.

CONCLUSION:

The Applicants are requesting a Special Exception, pursuant to Section 267-53K of the Harford County Code, for an accessory driveway and private road on land located in an AG/Agricultural District for a permitted use located on adjoining land in a B2/Community Business District.

Harford County Code Section 267-53K provides:

“Accessory parking areas, driveways and private roads. These uses may be granted in any district to serve a use permitted and located in another district but not permitted in the subject district, provided that:

- (1) The parking area, driveway or private road shall be accessory to and for the use of one (1) or more agricultural, residential, business or industrial uses located in an adjoining or nearby district.
- (2) No charge shall be made for the parking or storage of vehicles on any parking lot approved pursuant to this provision.
- (3) Any private road or driveway shall provide access to an approved private road, county road or state road or highway.
- (4) The number of parking spaces and total parking area approved in the subject district under this section shall not exceed thirty percent (30%) of the parking spaces and area required by this Part 1 for the permitted use.”

The Hearing Examiner finds that the Applicants have met or exceeded all of the requirements of the Harford County Code set forth in Section 267-53K. There is presently a driveway entrance near the proposed location that leads to a communications tower on the property. The proposed dual usage of this new driveway entrance will serve both the convenience store and the community college and ingress and egress is proposed to be improved by the Applicant for a distance of 190 feet back along Churchville Road/Route 22 as shown in Attachment 3 to the file, which was the Applicant’s site plan.

There will certainly be no charge for parking on this proposed use and the driveway will provide access to MD Route 22, which is a principal arterial road in Harford County. Since

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the proposal is only for a driveway, the provisions of Section 267-53K(4) regarding parking spaces is irrelevant to the subject request.

In addition to the particular standards set forth in the Harford County Code for this Special Exception use, the Maryland Court of Special Appeals has provided guidance as to the grant or denial of special exceptions in the State of Maryland, as set forth in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981):

...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner finds that the Applicant and Co-applicant have met their burden of proof for grant of a special exception use. There are no adverse impacts associated with the proposed request and the testimony of all witnesses and the Department of Planning and Zoning was to the effect that there would be no detrimental impact on adjacent properties and no material effect on the purposes of the Code. Moreover, the testimony indicates that even if there were an adverse impact, it would be no greater than and no different than any impact associated with a similar driveway regardless of its location within the zone. Therefore, the Applicant and Co-applicant have met their burden as required under the guidance of Schultz v. Pritts set forth above.

The Hearing Examiner, therefore, recommends approval of the Special Exception, subject to the following conditions:

1. That the Applicant and Co-applicant obtain any and all necessary permits and applications for the driveway and the proposed commercial use.
2. That the proposed driveway be submitted on a site plan for the convenience store.
3. That the site plan shall be submitted for review and approval through the Development Advisory Committee.

Date MAY 30, 2001

William F. Casey
Zoning Hearing Examiner